

No. 9/5/84-6Lab/11022.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s R. M. Control Pvt., Ltd., 13/3, Mathura Road, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 407 of 1985

*between*

SHRI CHEDI LAL, WORKMAN AND THE RESPONDENT-MANAGEMENT  
OF M/S R. M. CONTROL PVT. LTD., 13/3, MATHURA ROAD, FARIDABAD.

*Present:—*

Workman in person with Shri Devi Singh.

Shri Jagbir Singh, for the respondent-management.

#### AWARD

This industrial dispute between the workman Shri Chedi Lal, and the respondent-management of M/s R. M. Control Pvt. Ltd., 13/3, Mathura Road, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/126-85/30704-09, dated 23rd July, 1985, under section 10(i)(c) of the Industrial Disputes Act, 1947 for Adjudication. The terms of the reference are:—

Whether the termination of services of Shri Chedi Lal was justified and in order ? If not, to what relief is he entitled ?

The workman has settled his dispute with the respondent-management. He has received Rs 170.00 in full and final settlement of all his claims. He has no right of reinstatement/re-employment. Hence the award is given that the dispute has been fully settled.

R. N. SINGAL,

Presiding Officer,  
Labour Court, Faridabad.

Dated the 26th November, 1985.

Endst. No. 3635, dated the 10th December, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,

Presiding Officer,  
Labour Court, Faridabad,

No. 9/5/84-6Lab./11037.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s. New Vishavkarma Auto Industries. 5-J/107, Opposite K. C. Cinema, Faridabad.

IN THE COURT OF SHRI R.N. SINGAL, PRESIDING OFFICER, LABOUR COURT,  
FARIDABAD

Reference No. 107 of 1985

*between*

SHRI KISHAN CHAND CHAUHAN, WORKMAN AND THE RESPONDENT-MANAGEMENT  
OF M/S. NEW VISHAVKARMA AUTO INDUSTRIES, 5-J/107, OPPOSITE K. C. CINEMA,  
FARIDABAD

*Present:—*

Workman with Shri Gope Massey.

None for the respondent-management.

## AWARD

This industrial dispute between the workman Shri Kishan Chand and the respondent-management of M/s. New Vishavkarma Auto Industries, 5-J/107, Opposite K. C. Cinema, Faridabad under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Kishan Chand was justified and in order? If not, to what relief is he entitled?

The management did not appear after service. Hence the management was proceeded *ex parte*,—*vide* my order, dated 22nd August, 1984.

In *ex parte* evidence, the workman has stated that he was appointed on 10th January 1983 at Rs. 700 P. M. and his services were terminated illegally on 20th September, 1984. He has prayed for reinstatement with continuity of service. There is no reason to disbelieve his *ex parte* evidence. He has completed 240 days of service at the time of termination. Hence the provisions of section 25-F of the Industrial Disputes Act, 1947 should have complied with before terminating the services of the workman. These provisions were not complied with in this case. Hence the order of termination of services is illegal and unjustified. He is entitled to be reinstated with full back wages and continuity of service. The award is given accordingly.

Dated the 22nd November, 1985.

R. N. SINGAL,

Presiding Officer,  
Labour Court, Faridabad.

Endorsement No. 3650, dated the 10th December, 1985.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,

Presiding Officer,  
Labour Court, Faridabad.

No. 9/5/84-6Lab./11027.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Faris Alloy Forgings, 111, D.L.F., Industrial Area, 14, Milestone, Mathura Road, Faridabad:—

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT,  
FARIDABAD

Reference No. 575 of 1985

between

SHRI RAVINDER PARSHAD, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S  
FARIS ALLOY FORGINGS, 111, D.L.F., INDUSTRIAL AREA, 14, MILESTONE,  
MATHURA ROAD, FARIDABAD

Present :

None for the parties.

## AWARD

This industrial dispute between Shri Ravinder Parshad, workman and the respondent-management of M/s. Faris Alloy Forgings, 111, D.L.F., Industrial Area, 14 Milestone, Mathura Road, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana, *vide* his order No. ID/FD/160-85/38344-49, dated 17th September, 1985 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Ravinder Parshad was justified and in order? If not, to what relief is he entitled to?

Present none for the parties. Both the parties have been served on the given address. Called many a times. It is 2.10 p.m. It shows that the workman is not interested to pursue this reference. Hence the award is given that no dispute is pending between the parties.

Dated, the 26th November, 1985.

R. N. SINGAL,  
Presiding Officer,  
Labour Court, Faridabad.

Endst. No. 3640, dated the 10th December, 1985.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,  
Presiding Officer,  
Labour Court, Faridabad.

No. 9/5/84-6Lab./11025. -In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s R. M. Control Pvt. Ltd., 13/3, Mathura Road, Faridabad:—

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT,  
FARIDABAD

Reference No. 410 of 1985

*between*

SHRI MUNNER YADAV, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S  
R. M. CONTROL PVT. LTD., 13/3, MATHURA ROAD, FARIDABAD

*Present:—*

Workman with Shri Devi Singh.

Shri Jagbir Singh Bhadana for the respondent-management.

#### AWARD

This industrial dispute between the workman Shri Munner Yadav and the respondent-management of M/s. R. M. Control Pvt. Ltd., 13/3, Mathura Road, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana, —vide his order No. ID/FD/126-85-30683--86, dated 23rd July, 1985 under section (10) (i)(c) of the industrial Disputes Act, 1947 for adjudication. The terms of the reference are as under:—

Whether the termination of services of Shri Munner Yadav, was justified and in order? If not, to what relief is he entitled?

The workman has settled his dispute with the management. He has received Rs 500.00 in full and final settlement of his all claims. He has no right of reinstatement/re-employment. Hence the reference is decided that the dispute has been fully settled.

Dated, the 26th November, 1985.

R. N. SINGAL,  
Presiding Officer,  
Labour Court, Faridabad.

Endorsement No. 3638, dated, the 10th December, 1985.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,  
Presiding Officer,  
Labour Court, Faridabad.

No. 9/5/84-Lab./11038.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and management of M/s Remington Rand of India Limited, Mathura Road, Faridabad.

BEFORE SHRI R. N. BATRA,  
PRESIDING OFFICER,  
INDUSTRIAL TRIBUNAL HARYANA,  
FARIDABAD

Reference No. 61/1982

*between*

SHRI KHUSHLA NAND JOSHI, WORK-  
MAN AND THE MANAGEMENT OF M/S  
REMINGTON RAND OF INDIA LIMITED,  
MATHURA ROAD, FARIDABAD.

*Present:*

Shri H. R. Dua, for the workman.

• Shri R. N. Rai, for the management.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act 1947, the Governor of Haryana, referred the following dispute between Shri Khushla Nand Joshi, workman and the management of M/s. Remington Rand of India Limited, Mathura Road, Faridabad, to this Tribunal for adjudication :—

Whether the dismissal of service of Shri Khushla Nand Joshi was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his demand notice, dated 11th November 1981 alleged that he was employed by the respondent company as Operator,—vide letter, dated 7th November, 1975 on probation for a period of six months and was later on confirmed. It was further alleged that the claimant continued till his services were terminated on 17th June, 1981 when he was drawing Rs. 475.

as wages per month exclusive of Employees Provident Fund and E.S.I. contribution. It was alleged that the claimant was Propaganda Secretary of the Remington Rand Karamchhari Union and was a protected workman. It was further alleged that the management did not implement the settlement, dated 29th January, 1979 when the Union pressed hard for its implementation. It was alleged that the management did not like the trade union activities of the claimant and other office bearers of the Union. It was alleged that the Remington Rand Karamchhari Union served the management with a demand notice, dated 28th April, 1981 and submitted 5 copies to the Labour-cum-Conciliation Officer, Faridabad, but the management did not produce the relevant documents in conciliation proceedings. It was further alleged that the management entered into settlement with the non-existing Union and that on raising the objection by the office bearers and members of Remington Rand Karamchhari Union, they were harassed and penalised when the management issued a false and fabricated charge-sheet on the claimant and appointed a highly interested Enquiry Officer. It was alleged that the claimant objected to the appointment of the Enquiry Officer and requested the Enquiry Officer to permit him to be represented by Shri Babu Khan, Shri Sadakat Hussain, Shri Uday Singh, but the Enquiry Officer did not provide facilities to him. It was alleged that the enquiry was conducted against the principles of natural justice, due to which the claimant filed a suit and that temporary injunction was ultimately granted to him by the learned District and Sessions Judge, Faridabad, but the Enquiry Officer did not obey the said order. It was further alleged that the injunction order was vacated and thereafter the claimant was not given any opportunity to defend himself. It was pleaded that the order terminating the service of the claimant on 17th June, 1981 was illegal and as such the claimant was entitled to reinstatement with full back wages.

3. The management in its written statement, dated 7th September, 1982, pleaded that the claimant sent the demand notice direct to the Conciliation Officer and no industrial dispute was raised with the management and as such no industrial dispute existed between the parties. It was admitted that the claimant was appointed as Press Operator with effect from 12th September, 1975 and was drawing Rs. 472.99 Paise as wages per month. He was dismissed on 17th June, 1981. It was pleaded that the claimant was

dismissed from service for acts of gross misdemeanour for which he was charge-sheeted and thereafter a domestic enquiry was conducted, in which the claimant was found guilty and on the basis of the findings of the Enquiry Officer, the claimant was dismissed from service of the company. It was pleaded that the dismissal of the claimant had no nexus whatsoever with any union activities nor the management was aware of any such activities. It was pleaded that the settlement, dated 29th January, 1979 was arrived at with the Remington Rand Karamchhari Union and the claimant was one of the signatories. It was pleaded that there was some difficulty in introducing the final/revised incentive scheme in terms of the settlement, dated 29th January, 1979 and the matter was taken up with the Union and the Labour Department. It was denied that a false and fabricated charge-sheet was issued to the claimant to harass and penalise the claimant. It was pleaded that the claimant was served with two charge-sheets, dated 30th August, 1980 and 15th September, 1980, but the claimant did not submit his explanation and that domestic enquiry was instituted and an independent person was appointed as Enquiry Officer. It was pleaded that the claimant participated in the enquiry up to 7th February, 1981 and that the Enquiry Officer allowed the claimant to be represented by his co-worker as provided in the Certified Standing Orders of the Company, but the name of the representatives was not given by the claimant. It was further pleaded that Shri K. N. Joshi was not allowed to be represented by Shri Babu Khan as he was suspended from duty. It was pleaded that the claimant started evading the enquiry on one pretext or the other and filed a civil suit. It was pleaded that the Enquiry Officer kept the enquiry in abeyance till the matter of injunction was disposed of by the Civil Court. It was further pleaded that the proceedings were resumed with effect from 14th May, 1981 when the appeal filed by the claimant was dismissed. It was also pleaded that on resumption of enquiry, a registered letter, dated 6th May, 1981 was sent by the Enquiry Officer to the claimant intimating the next date of enquiry, which letter was received by the claimant but he stayed away from the enquiry. It was pleaded that the Enquiry Officer proceeded *ex parte* and recorded the statements of the management's witnesses. It was also pleaded that another opportunity was given to the claimant to come to cross-examine the

management witnesses and a letter, dated 18th May, 1981 was sought to be delivered to the claimant on his given address, but the person present there refused to accept the letter. It was pleaded that the opportunity given to the claimant was not availed of by him. It was pleaded that the enquiry was held fair and proper. It was pleaded that after completion of the enquiry, the Enquiry Officer submitted his report. It was further pleaded that the dismissal order passed by the management was legal.

4. The claimant in rejoinder, dated 14th September, 1982, reiterated the pleas taken in the demand notice.

5. On the pleadings of the parties, the following issues were framed on 14th September, 1982:—

- (1) Whether no demand was raised upon the management directly? If so, to what effect? OPM.
- (2) Whether the domestic enquiry is fair and proper? OPM.
- (3) Whether the dismissal of services of Shri Khushla Nand Joshi was justified and in order? If not, to what relief is he entitled? OPM.

6. It may be mentioned that the management has examined two witnesses and documents, Exhibit M-1 to M-54 have been tendered into evidence. The claimant has examined two witnesses and documents, Exhibit W-1 to W-16 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties my findings on the above issues are as under:—

7. It was argued by the representative of the management that the claimant had not served the demand notice on the management, but on the other hand, the same was sent directly to the Conciliation Officer. It was submitted by MW-1 Shri A. S. Sethi that the demand notice was received by the management through the Conciliation Office along with letter, Exhibit M-47. Reliance was placed on the ruling reported as *New Delhi Tailoring Mazdoor Union and S. C. Sharma and Co. (P.) Ltd. Etc.*, 1970 (39) F.L.R., page 195, in which it is laid down that a mere demand notice to the Government with a dispute being raised by the workman with their

employer cannot become an industrial dispute. The second ruling is *Fedders Lloyed Corporation, Private Ltd., and Lieutenant Governor, Delhi and others*, 1970(2), F.L.R., page 343, in which it is laid down that the demand by the workmen and rejection by employer was necessary and that the demand on Conciliation Officer and its communication by him was not sufficient. The third ruling is *The Sindhu Resettlement Corporation Ltd., v. The Industrial Tribunal of Gujarat and others*, 1968(1), S.C.R., page 515, in which it is laid down that a mere demand to the Government without a dispute being raised by the workmen with their employer cannot become an industrial dispute. The representative of the claimant has placed reliance on the ruling reported as *Shambu Nath Goyal and Bank of Baroda, Jullundur*, 1978-I.L.L.J., 484, in which it is laid down that making a demand for reinstatement is not a *sine-qua-non* for an industrial dispute to come into existence. In the latest ruling reported as *M/s. Rama Krishan Mills (Coimbatore) Ltd., Genapathy Post, Coimbatore and the Government of Tamil Nadu, etc.*, 1984-II-L.L.J., page 259, in which large number of previous rulings have been considered, it was held that a written demand on the management is not in all cases *sine-qua-non* and that there must arise a dispute or difference within the meaning of the Industrial Disputes Act, 1947 and that the talks and discussions before the Assistant Commissioner of Labour related to the order of dismissal and the demand to set them at naught and taken back the workmen. It was held that the demand as such need not in all cases be directly made by a representation to the management and the demand could be made through other sources also. In the present case, the demand notice was addressed to the management and in any case it was received by the management from the Conciliation Officer when the conciliation proceedings took place and as such the reference cannot be said to be invalid. The issue is decided accordingly against the management.

#### ISSUE NO. 2:

8. Exhibit M-2 is the copy of the charge-sheet, dated 30th August, 1980 in which it was alleged that the claimant along with workers resorted to tool down stay in strike since 2.30 p.m. from 27th August, 1980 in a concerted manner without any justification. It was further alleged that on 29th August, 1980 at about 4.20 p.m. the claimant left his place of work and

went to the Tool Room without any permission and intimidated and assaulted Shri J. K. Chambers for stopping his work and when he did not agree he was man handled. It was further pleaded that the claimant was asked by Shri A. K. Kaul, Shift Incharge to start work, but he quarrelled with Shri Sittal Parshad and used abusive language. In the charge-sheet, dated 15th September, 1980, Exhibit M-3 it was alleged that on 3rd September, 1980 at about 8.30 p.m. the claimant alongwith others intimidated the other workers who were willing to work and indulged in brick batting from outside the factory and used abusive language.

9. The management has examined MW-1 Shri G. K. Verma, who stated that he was appointed as Enquiry Officer, -vide letter, Exhibit M-1 and that he had received the charge-sheets, Exhibit M-2 and M-3 alongwith the said letter, when he sent notice to the parties copy, Exhibit M-4. He stated that notice was sent to the claimant by registered post, but, the claimant did not appear and the enquiry was adjourned to 13th December, 1980, when he sent notice, Exhibit M-5 to the claimant. He further stated that on 13th December, 1980, the claimant gave the letter, Exhibit M-6 in which he demanded facilities, which was replied by the Enquiry Officer and that the facilities were given to the claimant. He further stated that the claimant was asked to bring a co-worker as his representative because he could not bring an outsider according to the Certified Standing Orders of the Company. He further stated that the claimant was present on 3rd January, 1981 when the enquiry was adjourned to 23rd January, 1981 on his letter, Exhibit M-7. He further stated that the enquiry was adjourned to 7th February, 1981 and then 23rd February, 1981. He stated that on 23rd February, 1981 enquiry was not held and notice copy, Exhibit M-8 was sent to the claimant for 7th March, 1981 and that Shri Babu Khan appeared on behalf of the claimant, when the case was adjourned to 28th March, 1981. He further stated that he received the letters, Exhibit M-9, Exhibit M-10 and Exhibit M-11 and the claimant was informed, -vide letter, Exhibit M-18 regarding holding of enquiry and that Exhibit M-13 was the postal receipt and Exhibit M-14 was the acknowledgement, but the claimant did not appear and was proceeded *ex parte*. He further stated that the letter, Exhibit M-16 was written to the claimant which was received back, vide cover, Exhibit M-17 and that U.P.C. receipt was,

Exhibit M-18. He also stated that Exhibit M-15 contained the enquiry proceedings, which were completed on 5th June, 1981. He also stated that the documents, Exhibit M-19 to M-44, were produced during the enquiry and that Exhibit M-46 was the enquiry report sent by him. The documents, Exhibit M-47 to M-54 have been proved by the management.

10. The claimant has examined WW-1 Shri Babu Khan, who stated that he was General Secretary of Remington Rand Karamchari Union and that Shri K. N. Joshi was an officer bearer of that Union. He further stated that a settlement took place between the management and their Union in 1979, but the same was not implemented, due to which complaints were filed by the Union. He then stated that the management entered into argument with the other Union, namely, Remington Employees Union, on 6th August, 1980 when the objections were filed by their Union due to which the respondent had terminated the services of the office bearers of Remington Rand Karamchari Union. He further stated that the Enquiry Officer did not permit him to represent the claimant and that enquiry proceedings were stayed. WW-2 Shri Khushia Nand Joshi stated that he was Propaganda Secretary in the Union. He further stated that he filed objection regarding the appointment of Shri G. K. Verma as Enquiry Officer but he was not removed. He then stated that the Enquiry Officer did not inform him regarding the date of enquiry after the stay order was vacated. He further stated that his services were terminated due to trade union activities. Documents, Exhibit W-1 to W-16, have been proved by the claimant.

11. A perusal of the above evidence would show that the claimant was charge-sheeted,—vide charge-sheets, Exhibit M-2 and M-3, but he did not give his explanation. Shri G. K. Verma was appointed as Enquiry Officer. The claimant participated in the enquiry up to 7th March, 1981, when it was adjourned to 23th March, 1981. The enquiry was adjourned due to stay order issued by the learned Civil Court and after vacation of the stay order, the enquiry was fixed for 14th May, 1981. The claimant was informed,—vide letter, dated 6th May, 1981, Exhibit M-12, which was received by him,—vide A.D. receipt, Exhibit M-14. The enquiry proceedings shows that the claimant did not appear in spite of service on 11th

May, 1981 and *ex parte* proceedings were ordered against him. The management examined Shri A. S. Sethi, Shri I. S. Uppal on that date and the enquiry was adjourned to 15th May, 1981. On 15th May, 1981 the management examined Shri J. K. Chambers, Shri G. Mathews, Shri K. K. Bose, Shri Y. P. Verma, Shri J. L. Rajpal, Shri Meghraj, Shri Prem Kumar Kaiburia, Shri Kesar Singh Negi, Shri J. R. Rawa, Shri Mishri Lal Saini, Shri Ram Narain and Shri Jhuri Lal. The enquiry was adjourned to 22nd May, 1981. The enquiry proceedings further shows that the registered letter copy, Exhibit M-16, dated 18th May, 1981 was sent to the claimant and the Enquiry Officer personally tried to deliver this letter on 18th May, 1981 at about 6.00 p.m. at the address of the claimant, but the persons who were present there refused to receive the same despite repeated requests made by the Enquiry Officer and they also refused to disclose their names to the Enquiry Officer. The report of the Enquiry Officer appears on the back side of the letter, Exhibit M-16. The Enquiry Officer again proceeded *ex parte* and recorded the statements of Shri Beli Ram Malhotra on 22nd May, 1981 and the enquiry was adjourned to 5th June, 1981, on which date Shri Sittal Parshad and Shri A. K. Kaul were produced by the management. The enquiry was closed on that date. The Enquiry Officer then submitted his report copy, Exhibit M-45 holding that the claimant was guilty of all the charges framed against him. The Enquiry Officer has referred to the entire evidence produced by the management in *ex parte* proceedings.

12. It was argued by the representative of the workman that the Enquiry Officer held *ex parte* enquiry illegally against the claimant and as such, the same was vitiated. Reliance has been placed on the ruling—rulings reported as *M/s Khardhah and Co. Ltd. v. The Workman*, AIR, 1964, Supreme Court 719, in which it is laid down that evidence must be led in the presence of the workmen. The second ruling is *Tripathi, K. L. and State Bank of India and others*, 1984 I-LLJ., page 2, in which, it is laid down that if the evidence was not recorded in the presence of the delinquent employee, the enquiry was vitiated. Both these rulings are distinguishable on facts because in the present case, the claimant himself did not appear on 14th May, 1981 and thereafter another opportunity was given to him for 22nd May, 1981 when the registered letter copy, Exhibit M-16, dated 18th May, 1981 was

sent to the claimant and the Enquiry Officer personally sought to deliver this letter on 18th May, 1981, at about 6 p.m. at the address of the claimant, but the persons who were present there refused to receive the same despite repeated requests made by the Enquiry Officer and they also refused to disclose their names to the Enquiry Officer. As such, *ex parte* proceedings were ordered against the claimant by the Enquiry Officer. In the ruling reported as *Gremption Greaves Ltd., Bombay and Shri S. W. Shinde*, 1974(28) F.L.R., page 80, it is laid down that where there was intentional absence of workman on date fixed for holding enquiry, the enquiry was justified. In the ruling reported as *Major U. R. Bhatt v. Union of India*, Volume 21, F.J.R. 478, it is laid down that where the employee refused to take part in enquiry proceedings, the Enquiry Officer could proceed on the materials which were placed before him. In the ruling reported as *Lakshmi Devi Sugar Mills Ltd., v. Pt. Kam Sarup*, 1956 S.C.R. 916, it is laid down that where the full and free opportunity was given to the worker to be present and defend himself in duly notified enquiry and he failed to do so, the management was quite within its rights to come to its own conclusion. For the reasons given above, the *ex parte* enquiry held against the claimant does not stand vitiated. The argument has no force.

13. It was argued by the representative of the workman that the claimant was not allowed to be represented by Shri Babu Khan, Shri H. R. Dua and Shri Dalip Singh. The Enquiry Officer allowed the claimant to bring a co-worker in the enquiry as per clause 22(3) of the Certified Standing Orders of the Company. The Enquiry Officer dealt with this point and held that Shri H. R. Dua and Shri Dalip Singh were outsiders while Shri Babu Khan was under suspension and as such the claimant could not be allowed to be represented by these persons. In the ruling reported as *N. Kalindi and other v. M/s Tata Locomotive and Engineering Co. Ltd., Jamshedpur*, 1950-67(4) S.C., L.J. 2721, it is laid down that in a domestic enquiry, the claimant is not entitled to be represented by a member of the Union. In the ruling reported as *Haridas Malakar and others and Joy Engineering Works* 1975-II-L.J., page 26, it is laid down that there was no violation of the principles of natural justice simply because the workman was not allowed to represent his case before the domestic enquiry

by a suspended co-workman of his choice. The representative of the workman placed reliance on the ruling reported as *Best Karmgar Union and Bombay Electric Supply and Transport Undertaking and others*, 1985(59) F.L.R., page 33. This ruling is distinguishable on facts because the same related to the provisions of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, which clearly confers right upon an unrecognised Union to appear on behalf of any of its members in any domestic enquiry. As already mentioned above, the Certified Standing Orders of the Company permitted only co-workman to represent him in the domestic enquiry. The second ruling is *The Board of Trustees Fort of Bombay and Kailipkumar Raghavendranath Nadkarni and others* 1983(46) F.L.R., page 80, which is also distinguishable on facts because the same relates to Regulation 12(R) of the Bombay Port Trust Employees' Regulations, 1976, which permitted a claimant to engage a legal practitioner if a Presenting Officer appointed by the disciplinary authority was a legal practitioner. The Certified Standing Orders of the respondent-Company only permit a co-workman to represent a claimant in the domestic enquiry. Consequently, the argument has no force.

14. It was then argued that the list of witnesses was not supplied to the claimant on 11th December, 1980. Reliance was placed on the ruling reported as *Pandab Bissoyi and other v. Magitit Sasamal*, AIR 1957 Orissa, 17, in which it is laid down that the names of witnesses be intimated to the person proceeded against. The claimant had made prayer for supply of list of witnesses, but he absented himself from the enquiry on 14th May, 1981 and again did not appear on 22nd May, 1981 inspite of registered letter having been sent to him. This ruling, therefore, does not help the claimant because he absented himself with effect from 14th May, 1981. In an *ex parte* enquiry, the question of cross-examining the witnesses did not arise.

15. It was then argued that the claimant was victimised being Propaganda Secretary of the Union. As already mentioned above, the claimant was charge-sheeted and domestic enquiry was held against him. Consequently, the proceedings were not initiated against him merely because he was Propaganda Secretary of the Union. In the ruling reported as *Anand Bazar Patrika (P) Ltd. v. Its Workmen* 1964(3) S.C.R., page 601 it is laid



down that the inference as to victimisation should be drawn only where the evidence has been led to justify it. In the ruling reported as *M/s. Bharat Iron Works v. Bhagubhai Patel and others*, 1976 S.C.C. (L&S), page 92, it is laid down that onus of establishing a plea of victimisation will be upon the person pleading it. In the ruling reported as *Employees in Relation Colliery and their Workmen*, 1950-67(2) Supreme Court Labour Judgements, 370, it is laid down that where on the question of victimisation, no evidence was led on behalf of the employee, the finding of the Tribunal on this point is vitiated in law. The argument is without any force because the management charge-sheeted and held enquiry against the claimant with regard to the charges contained in the charge-sheets, Exhibit M-2 and M-3 and as such it cannot be held that the claimant was victimised.

16. It was argued that no second show cause notice was given to the claimant. Reliance was placed on the ruling reported as *State of Maharashtra and Baishanker Avalram Joshi and another* 1970(20) F.L.R. 289, in which it is laid down that failure to supply the copy of report the Enquiry Officer to the delinquent Government servant amounted to denial of reasonable opportunity within Article 311(2) of the Constitution. This ruling is distinguishable on facts because the same relates to the Government servant who is governed by Article 311(2) of the Constitution and these provisions are not applicable to the present case. Second ruling is *M/s. Lakshiratan Cotton Mills Co. Ltd. and its workmen*, 1976-II-L.L.J. 174, in which it is laid down that where there was a failure to give adequate opportunity to show cause against proposed punishment, it amounted to violation of clause (1) of Standing Orders 26. This ruling is distinguishable on facts because the same relates to different standing orders and the provisions of U.P. State Industrial Disputes Act, 1947, applied to that case. In the Standing Orders of the Company, it is nowhere laid down that second show cause should be given to the delinquent.

17. It was then argued that the Enquiry Officer was not an independent person and as such the enquiry was vitiated. The argument does not carry any weight because the Enquiry Officer dealt with the objections raised by the claimant during the enquiry but, later on the claimant absented himself and did not participate in the enquiry. He even did not submit his explanation to the charges.

18. In view of the above discussion, it is held that the Enquiry was fair and proper. The issue is decided accordingly in favour of the management.

ISSUE NO. 3:

19. As already mentioned above the enquiry was fair and proper and no interference in the findings of the Enquiry Officer is called for because the findings are based on evidence and the Enquiry Officer has referred to the testimony of 17 witnesses produced before him by the management in the enquiry. The claimant did not care to give his explanation to the charge-sheets and later on absented himself, due to which *ex parte* enquiry was held against him.

20. It was argued by the representative of the workman that the punishment given to the claimant was harsh and disproportionate to the misconduct attributed to him. It was argued that the management had taken a lenient view in case of other workers who were alleged to have committed the same acts but a strict view was taken in case of punishment regarding the claimant because he was Propaganda Secretary of the Union. It was argued by the representative of the management that punishment awarded to the claimant was proportionate to the acts committed by him. The management has placed reliance on the rulings reported as *Pure Drinks (Private) Ltd. and Kirat Singh Maungatt and another*, 1961(3) F.L.R. 46, *The Calcutta Jute Manufacturing Co. Ltd. v. Calcutta Jute Manufacturing Workers Union*, 1962(1) S.C.R. 483, *Tata Oil Mills Co. Ltd. v. Its Workmen*, 1964(7) S.C.R. 555, and *Bengal Bhatdee Coal Co. v. Shri Ram Prabesh Singh and others* 1964(1) S.C.R., page 709. All these rulings are distinguishable on facts because the provisions of Section 11-A of the Industrial Disputes Act, 1947, were not dealt with in these cases as these provisions were enacted in 1971.

21. In the ruling reported as the *General Manager, Chandigarh Transport Undertaking, Chandigarh v. Ranjit Singh and another*, 1982-Lab.I.C.694, it is laid down that Industrial Tribunal could interfere with the punishment under section 11-A of the Industrial Disputes Act, 1947, only if it was so harsh as to suggest victimisation. In the ruling reported as *Sarabhai M. (S.M. Chemicals and Electronics) Ltd. and M. S. Ajmere and another* 1980-I.L.L.J., page 295, it is laid down that under Section 11-A of the Industrial Disputes Act, 1947, the Tribunal can interfere with the punishment if the same is excessive

and shockingly disproportionate. In the ruling reported as *The East India Hotels v. Their Workmen and others*, 1974-Lab.I.C.532, it is laid down that the Industrial Tribunal can interfere with the punishment under Section 11A of the Industrial Disputes Act, 1947, if the same is harsh and oppressive. In the ruling reported as *Godfrey Phillips India Ltd. Manik Vasudeo and other*, 1973-I.L.L.J. 278, it is laid down that the Tribunal can interfere with the punishment where the same is so harsh as to suggest victimisation. In the present case, the claimant has been dismissed alongwith office bearers of the Union, but the other workers who had committed the same acts have been taken back in service by the management because they tendered apology. It is thus apparent that the management deemed it proper to reinstate the other workers on their tendering apology. The management has discretion while awarding the punishment, but once the management decided to reinstate a large number of persons for these acts of misconduct, it cannot discriminate the case of the claimant merely because he was Propaganda Secretary of the Union. It cannot be held that punishment of dismissal would be fair in the case of the claimant because he is Propaganda Secretary of the Union and that reinstatement of the other workers was fair because they were not office-bearers of the Union. In case of punishment for similar acts, same principles have to be applied. Under these circumstances, the punishment of dismissal awarded to the claimant cannot be upheld being harsh and oppressive and, as such, the impugned order of dismissal against the claimant is set aside. The ends of justice would be met if the claimant is reinstated, but he is deprived of his back wages for his acts of misconduct. The award is passed accordingly.

The 2nd December, 1985.

R. N. BATRA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 951, dated 11th December, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 9/5/84-6Lab./11039.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Remington Rand of India Ltd., Plot No. 3, Sector 6, 20/7, Mathura Road, Faridabad.

BEFORE SHRI R. N. BATRA,  
PRESIDING OFFICER,  
INDUSTRIAL TRIBUNAL, HARYANA,  
FARIDABAD

Reference No. 403/1982

between

SHRI VIRENDER SINGH, WORKMAN AND  
THE MANAGEMENT OF M/S REMINGTON  
RAND OF INDIA LTD., PLOT NO. 3,  
SECTOR-6, 20/7, MATHURA ROAD,  
FARIDABAD

Present:

Shri H. R. Dua for the workman.  
Shri R. N. Rai for the management.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Virender Singh, workman and the management of M/s. Remington Rand of India, Ltd., Plot No. 3, Sector-6, 29/7, Mathura Road, Faridabad, to this Tribunal for adjudication :—

Whether the termination of services of Shri Virender Singh was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his demand notice, dated 29th July, 1982 alleged that he was served with false and fabricated charge-sheets, dated 8th February, 1981 and 27th February, 1981 and in his explanation asked the management not to victimise him for his trade union activities, but the management appointed Shri J. S. Saroha as Enquiry Officer

whose appointment was rejected by the claimant, but to no effect. It was further alleged that the Enquiry Officer did not give him the requisite facilities and he was not allowed to be represented by any co-worker and office-bearers of the trade union and that termination of his services was illegal and as such he was entitled to reinstatement with full back wages.

3. In the written statement, dated 17th March, 1983 and amended written statement, dated 10th May, 1983, it was denied that false and fabricated charge-sheets were served on the claimant. It was pleaded that the Enquiry Officer conducted the enquiry in respect of both the charge-sheets in accordance with the Certified Standing Orders and that objections raised by the claimant about the appointment of Mr. J. S. Saroha was overruled by the management,—vide letter, dated 18th April, 1981. It was pleaded that the claimant fully participated in the enquiry. It was further pleaded that Shri Babu Khan and Shri Sadakat Husam were outsiders and as such the claimant could not be allowed to be represented through them. It was pleaded that the Enquiry Officer held enquiry regarding the charge-sheets, dated 8th February, 1981 and 27th February, 1981. It was further pleaded that no action was taken with regard to the charge-sheet, dated 31st October, 1981, and the claimant was dismissed on the basis of the findings on the charge-sheets, dated 8th February, 1981 and 27th February, 1981. It was further pleaded that in the dismissal letter, dated 26th March, 1981 inadvertently charge-sheet, dated 31st October, 1981 has been mentioned whereas it should be charge-sheets, dated, 8th February, 1981 and 27th February, 1981 and that there is no requirement to give a second show cause notice to the claimant.

4. The claimant in his rejoinder, dated 12th April, 1983, reiterated the pleas taken the demand notice.

5. On the pleadings of the parties, the following issues were framed on 12th April, 1983:—

(1) Whether the domestic enquiry is fair and proper ?

OPM

(2) Whether the termination of service of Shri Virinder Singh was justified and

in order ? If not, to what relief is he entitled ?

OPM

6. It may be mentioned that the management has examined two witnesses and documents, Exhibit M-1 to M-80 have been tendered into evidence. The claimant has examined two witnesses and documents, Exhibit W-1 to W-10 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

ISSUE NO. 1:

7. The management has examined MW-1 Shri Ajit Singh Seini, Personnel manager, who stated that the claimant joined service in 1970 and that Exhibit M-1 and M-2 were the warning letters issued to the claimants, while Exhibit M-3 was the letter of dismissal and A.D. receipt was Exhibit M-4. He further stated that Exhibit M-5 was the letter written by the claimant and Exhibit M-6 was the copy of the reply sent to the claimant and that Exhibit M-7 was A.D. receipt. He further stated that Exhibit M-8 contained Certified Standing Orders of the respondent Company. MW-2 Shri J. S. Saroha, Advocate, stated that he was appointed as Enquiry Officer in this case,—vide letter, Exhibit M-9 and issued notices to both the parties,—vide letter, Exhibit M-10. He further stated that the enquiry pertained to two charge-sheets, Exhibit M-11 and M-12 and that explanation of the claimant, Exhibit M-13 was received by him. He further stated that Exhibit M-14 contained the enquiry proceedings and that documents, Exhibit M-15 to M-75 were filed during the enquiry and that Exhibit M-77 was the enquiry report submitted by him. He further stated that he gave all the facilities to the claimant in accordance with the principles of natural justice and advised him to bring a co-worker to assist him in the enquiry, but he did not avail of the opportunity. He further stated that the claimant cross-examined all the witnesses produced before the Enquiry Officer and produced his defence witnesses, as well. He further stated that he received the letter, Exhibit M-77 from the claimant, which was replied by him,—vide letter, Exhibit M-78 and that Exhibit M-79 was the postal receipt. Document, Exhibit M-80 has also been proved by the management.

8. The claimant has examined WW-1 Shri Khushla Nand Joshi, who stated that he

knew the workman who worked in the Maintenance Department. He further stated that he never saw the claimant working at the Generator. He also stated that their Union was known as Remington Rand Karamchari Union and that the claimant was a member of that Union. He also stated that the management had dismissed the office-bearers/leaders of the Union and that the claimant had been dismissed due to his trade union activities. WW-2 Shri Virender Singh claimant, stated that the appointment letter, Exhibit W-6 was given to him by the respondent Company and that Exhibit W-7 was the copy of the joining letter. He further stated that he used to work as fitter in the respondent factory and that charge-sheet was served on him when he was suspended alongwith other office-bearers of the Union. He also stated that he had requested that the Enquiry Officer be changed because he was counsel of the Company but his objection was overruled. He further stated that he demanded facilities which denied to him and that he had suggested the names of some person as his representative, but was not allowed to be represented through them. He further stated that the enquiry was not held in accordance with the principles of natural justice and that his services were terminated in a revengeful spirit due to his trade union activities. Documents, Exhibit W-1 to W-10 have been proved.

9. In the charge-sheet, dated 27th February, 1981, Exhibit M-12, it was alleged that the claimant had been duly trained to operate the Generator Set, which he had been actually operating for the last 1½ years, but he refused to operate the same on 10th February, 1981, 11th February, 1981 and 15th February, 1981 inspite of the requests made by the Departmental Incharge. It was further alleged that the letter was written to the claimant on 19th February, 1981 in that respect, but he refused to receive the same and that registered letter was also written to him on 21st February, 1981. It was further alleged that all acts of the claimant amounted to wilful insubordination of any lawful and reasonable order of a superior and refusal to accept the communication. The explanation given by the claimant is Exhibit M-13. The above evidence shows that Shri J. S. Saroha, Advocate, was appointed as Enquiry Officer. Exhibit M-14 contains the enquiry proceedings. The objection raised by the claimant regarding the appointment of the Enquiry Officer has been dealt with in the enquiry proceedings, dated 11th April, 1981. On

9th May, 1981, the Enquiry Officer asked the claimant to bring any co-workman as his representative in the enquiry. The management examined Shri I. L. Uppal, Supervisor, Shri A. K. Kaul, Shri Virender Mohan Sharma, Shri Vigyan Singh, Shri A. S. Sethi, Shri Ram Niwas, Shri Jotish Yadav and Shri Sitiniwasan. All these witnesses were cross-examined by the claimant. The claimant appeared in the enquiry and examined Shri B. N. Rai and Shri Jaswant Singh. The claimant was asked to bring his remaining evidence on 28th November, 1981. On 28th November, 1981, the Enquiry Officer came a bit late and the claimant was advised by the Security Officer to wait, but the claimant left the place and a letter was sent to the claimant at his home through the security guard asking him to appear on 29th November, 1981 but the claimant did not appear. A telegram was also sent to the claimant. The Enquiry proceedings shows that another letter was sent to the claimant *dasti*, in which he was asked to appear on 30th November, 1981 which letter was delivered at his residence, but the claimant did not appear in the enquiry on 30th November, 1981 and as such the enquiry proceedings were closed. The Enquiry Officer has discussed the entire evidence. Shri I. L. Uppal and Shri A. S. Sethi, Personnel Manager, stated that the claimant was running the Generator Set for the last 1½ years. The log books were also produced before the Enquiry Officer in that respect. Shri A. K. Kaul, Shri Virender Mohan Sharma and Shri Vigyan Singh also stated that the claimant used to operate the Generator Set. The evidence of the claimant was not accepted by the Enquiry Officer because there was oral and documentary evidence to show that the Generator Set was being run by the claimant as admitted by him in his explanation, dated 28th January, 1981 and statement, dated 20th January, 1981, Exhibit M-21. The management led evidence that the claimant refused to operate the Generator Set on 10th February, 1981, 11th February, 1981 and 15th February, 1981. The management also led evidence that the claimant had refused to receive the letter copy, Exhibit M-18, dated 19th February, 1981 and registered letter, dated 21st February, 1981, Exhibit M-19 was sent to him —vide postal receipt, Exhibit M-20. In this letter the claimant was asked to co-operate in running the Generator Set. The Enquiry Officer has given the findings regarding charges No. 1 and 2 relating to the charge-sheet, Exhibit M-12 in his report, Exhibit M-76. The findings of

the Enquiry Officer are based on evidence and no interference with the same is called for.

10. It was argued by the representative of the claimant that the claimant was not permitted to be represented by Shri Sadakat Hussain, Shri Babu Khan and Shri H. R. Dua. The Enquiry Officer allowed the claimant to bring a co-worker in the enquiry as per clause 22(3) of the Certified Standing Orders of the Company. The Enquiry Officer dealt with this point and held that Shri Babu Khan, Shri Sadakat Hussain and Shri H. R. Dua were outsiders. In the ruling reported as *N. Kalindi and other v. M/s. Tata Locomotive and Engineering Co. Ltd., Jamshedpur*, 950-67(4) S.C., L.J. 2721, it is laid down that in a domestic enquiry the claimant is not entitled to be represented by a member of the Union. In the ruling reported as *Haridas Malakar and others and Joy Engineering Work*, 1975-II-LLJ, page 26, it is laid down that there was no violation of the principles of natural justice simply because the workman was not allowed to represent his case before the domestic enquiry by a suspended co-workman of his choice. The representative of the workman placed reliance on the ruling reported as *Best Karmgar Union and Bombay Electric Supply and Transport Undertaking and others*, 1985(59) F.L.R., page 33. This ruling is distinguishable on facts because the same related to the provisions of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971, which clearly confers right upon an unrecognised Union to appear on behalf of any of its members in any domestic enquiry. As already mentioned above the Certified Standing Orders of the Company permitted only a co-workman to represent him in the domestic enquiry. The second ruling is *The Board of Trustees Fort of Bombay and Kailipkumar Raghavendranath Nandkarni and others*, 1983(46) F.L.R., page 80, which is also distinguishable on facts because the same relates to Regulation 12(B) of the Bombay Port Trust Employees Regulations 1976, which permitted a claimant to engage a legal practitioner if a Presenting Officer appointed by the disciplinary authority was a legal practitioner. The Certified Standing Orders of the respondent Company only permit a co-workman to represent a claimant in the domestic enquiry. Consequently, the argument has no force.

11. It was then argued that the claimant was victimised being active member of the Union.

As already mentioned above, the claimant was charge-sheeted and domestic enquiry was held against him. Consequently, the proceedings were not initiated against him merely because he was active member of the Union. In the ruling reported as *Anand Bazar Patrika (P) Ltd. v. Its Workmen*, 1964(3) S.C.R., page 681, it is laid down that the inference as to victimisation should be drawn only where the evidence has been led to justify it. In the ruling reported as *M/s Bharat Iron Works v. Bhagubhai Balubhai Patel and others*, 1976 S.C.C. (L. & S.) page 92, it is laid down that onus of establishing a plea of victimisation will be upon the person pleading it. In the ruling reported as *Employees in Relation to the Madhuband Colliery and their Workmen*, 1950-67(2), Supreme Court, Labour Judgements, 876, it is laid down that where on the question of victimisation no evidence was led on behalf of the employee, the finding of the Tribunal on this point is vitiated in law. The argument is without any force because the management charge-sheeted and held enquiry against the claimant with regard to the charges contained in the charge-sheet, Exhibit M-12. Even in the letter, Exhibit M-80, dated 27th March, 1980, the name of the claimant does not appear as protected man. Consequently, it cannot be held that the claimant was victimised.

12. It was argued that no second show cause notice was given to the claimant. Reliance was placed on the ruling reported as *State of Maharashtra and Baishankar Avalram Joshi and another*, 1970(20) F.L.R. 289, in which it is laid down that the failure to supply the copy of the Enquiry Officer to the delinquent Government servant amounted to denial of reasonable opportunity with in Article 311(2) of the Constitution. This ruling is distinguishable on facts because the same relates to the Government servant, who is governed by Article 311(2) of the Constitution and these provisions are not applicable to the present case. The second ruling is *M/s. Lakshiratan Cotton Mills Co. Ltd. and its Workmen*, 1976-II-LLJ.174, in which, it is laid down that where there was failure to give adequate opportunity to show cause against proposed punishment, it amounted to violation of clause (1) of the Standing Order 26. This ruling is distinguishable on facts because the same relates to different standing orders and the provisions of U.P. States Industrial Disputes Act, 1947, applied to that case. In the Standing Order of the respondent-company, it is nowhere laid down that second show-cause should be given to the delinquent,

13. It was argued that the Enquiry Officer was not an independent person and as such enquiry was vitiated. Shri J. S. Saroha was appointed as Enquiry Officer. It was argued by the representative that he was an independent person. In the ruling reported as *M/s. Dalmia Dabri Cement Ltd. v. Murari Lal Bikaneria*, 1971 Lab.-I-C 1, it is laid down that where the Enquiry Officer was Junior Advocate and at times appearing on behalf of the management, no bias can be inferred. In the ruling reported as *Saran Motors Private Ltd., New Delhi and Vishwanath and another*, 1961(9) F.L.R. 7, it is laid down that where the enquiry was held by a person employed as lawyer and was paid remuneration for holding the enquiry he cannot be held to be incompetent. The argument, therefore, fails.

14. It was argued that no opportunity was given to the claimant to produce his defence evidence. As already mentioned above, the claimant has examined 3 witnesses but he absented himself, even though he was asked to bring remaining witnesses on 28th November, 1981, 29th November, 1981 and 30th November, 1981. Consequently the claimant was given full opportunity to produce his defence evidence, as mentioned above.

15. In the charge sheet, Exhibit M-11, dated 8th February, 1981, it was alleged that it was reported that the radiator in the Generator Set was damaged and blasted on 19th January, 1981 at 1.45 p.m. and that on investigation it was found that a part of portable machine was found embedded in the copper fins of the Radiator. It was further alleged that the damage had been caused during the course of the duty of the claimant and either he had done it deliberately or damage has been caused due to his utter negligence in the performance of his duty. The management examined above mentioned 8 witnesses, while 3 witnesses were examined by the claimant. The enquiry proceedings, Exhibit M-14 and enquiry report, Exhibit M-76 show that Shri I. L. Uppal Supervisor, has deposed that damage had been caused to the Generator Set. The Enquiry Officer held that no body had admitted that any person was sent throwing the part of the portable machine in the radiator and since the claimant was the only person present in the room, the radiator could be blasted without the knowledge or connivance of the claimant. The claimant himself reported regarding the damage of the radiator.—vide report, Exhibit M-28, dated 20th January, 1981. In the preliminary enquiry,

Exhibit M-21, he stated that he operated the Generator Set from 6.00 a.m. to 11.50 a.m. and after taking one hour's rest he again started the same at 1.25 p.m., when he heard the noise of the blast after about 30 minutes and then stopped the Generator Set and reported the matter to the higher authorities. It is thus apparent that there is no direct evidence implicating the claimant regarding causing of damage to the Generator Set. The Enquiry Officer presumed the negligence of the claimant because he was the only person or sent in the room. The claimant in the document, Exhibit M-21, clearly stated that he was on duty from 6.00 a.m. to 11.50 a.m. and then he took rest for one hour and again started his duty at 1.25 p.m., when the blast was noticed after 30 minutes. The claimant took rest for one hour after 11.50 a.m. It cannot be believed that he would remain in the room during rest interval because he was running the Generator Set since 6.00 a.m. Consequently during the interval period some one else must have replaced him in his absence when he was supposed to take tea meals, etc., after working continuously from 6.00 a.m. to 11.50 a.m. It is thus apparent that part of the portable machine was thrown in the Generator Set during rest interval because if the claimant wanted to commit any mischief, he could do so in the morning when he started his duty at 6.00 a.m. and nothing happened up to 11.50 a.m. The presumption raised by the Enquiry Officer is, therefore, not based on evidence. Under these circumstances the finding given by the Enquiry Officer with regard to charges No. 3 to 5 relating to the charge-sheet, Exhibit M-11 being thus not based on evidence cannot be upheld.

16. In view of the above discussion, it is held that the enquiry is fair and proper regarding charges 1 and 2 only relating to charge-sheet, Exhibit M-12, dated 27th February, 1981. The issue is decided accordingly partly in favour of the management.

#### ISSUE NO. 2:

17. It was argued by the representative of the claimant that in the order of dismissal, dated 26th March, 1982, copy, Exhibit M-3 the charge-sheet, dated 31st October, 1981 had been referred to and as such the impugned order was liable to be set aside. In the amended written statement, dated 10th May, 1983 it was clarified by the management that in the dismissal letter, Exhibit M-3

inadvertently charge-sheet, dated 31st October, 1981, had been referred to whereas no action was taken on that charge-sheet. On the other hand, the enquiry in the present was held on the charge-sheets, dated 8th February, 1981 and 27th February, 1981, Exhibit M-11 and M-12, respectively and that the Enquiry Officer gave findings in his report, Exhibit M-76 on the basis of both these charge-sheets and not on the charge-sheet, dated 31st October, 1981. Consequently, the error which was apparent in the dismissal letter was clarified by the management and as such the dismissal order related to the charges which were contained in the charge-sheets, Exhibit M-11 and M-12 and all these charges have been mentioned in the dismissal letter. The argument, therefore, does not carry any weight.

18. It was argued by the representative of the claimant that punishment awarded to the claimant was harsh and oppressive, while the plea of the representative of the management was that the punishment was in proportionate to the misconduct attributed to the claimant. The management has placed reliance on the rulings reported as *Pure Drinks (Private) Ltd. and Kirat Singh Maungatt and another* 1961(3) F.L.R. 46, *The Calcutta Jute Manufacturing Co. Ltd., v. Calcutta Jute Manufacturing Workers Union*, 1962(1) S.C.R. 483, *Tata Oil Mills Co. Ltd. v. Its Workmen*, 1964(7) S.C.R. 555, and *Bengal Bhatdee Coal Co. v. Shri Ram Prabesh Singh and others*, 1964(1) S.C.R., page 709. All these rulings and distinguishable on facts because the provisions of Section 11-A of the Industrial Disputes Act, 1947 were not dealt with in these cases as these provisions were enacted in 1971. In the ruling reported as the *General Mancoer, Chandigarh Transport Undertaking, Chandigarh v. Ranjit Singh and another*, 1982 Lab.I.C. 604, it is laid down that Industrial Tribunal could interfere with the punishment under Section 11-A of the Industrial Disputes Act, 1947, only if it is so harsh as to suggest victimisation. In the ruling reported as *Sarabhai M. Chemicals (S.M. Chemicals and Electronics) Ltd. and M. S. Airiere and another*, 1980-I.L.J. page 295, it is laid down that under Section 11-A of the Industrial Disputes Act, 1947, the Tribunal can interfere with the punishment if the same is excessive and shockingly disproportionate. In the ruling reported as *The East India Hotels v. Their Workmen and others*, 1974 Lab. LC.532, it is laid down that the Industrial Tribunal can interfere with the punishment

under Section 11-A of the Industrial Disputes Act, 1947, if the same is harsh and oppressive. In the ruling reported as *M/s. Godfrey Phillips India Ltd. and Manik Vasudra and others*, 1973 I.L.L.J. 278, it is laid down that Tribunal can interfere with the punishment where the same is so harsh as to suggest victimisation. In the present case, a lenient view in case of punishment is called for because the incident, dated 8th February, 1981 was lurking in the mind of the claimant, when he was charge-sheeted regarding the damage having been caused to the Generator Set and due to that incident he was feeling some what hesitant to operate the Generator Set. As already mentioned above, the charges relating to the incident, dated 8th February, 1981 has not been proved against the claimant. Consequently, the impugned order of dismissal is set aside. The ends of justice would be met if the claimant is reinstated but he should be deprived of his full back wages for the misconduct proved against him relating to the charges contained in the charge-sheet, Exhibit M-12, dated 27th February, 1981. The award is passed accordingly.

The 2nd December, 1985.

R. N. BATRA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 952, dated 11th December, 1985.

Forwarded (four copies), to the Commissioner and Secretary, Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

The 2nd December, 1985.

R. N. BATRA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

The 10th December, 1985

No. 9/5/84-6 Lab./10090.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the

management of M/s. Aman Scales Pvt. Ltd., 14-A, NIT, Faridabad :—

the employment with effect from 1st July, 1982. It was further pleaded that the respondent concern was a shop.

BEFORE SHRI R. N. BATRA, PRESIDING  
OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD.

3. On the pleadings of the parties, the following issues were framed on 11th December, 1984:—

Reference No. 627/1983.

Between

SHRI KISHAN GIRI WORKMAN AND THE  
MANAGEMENT OF M/S AMAN SCALES  
PVT. LTD., 14-A, N.I.T., FARIDABAD

Present :—

Shri H. R. Dua, for the workman.  
None for the Management.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Krishan Giri, Workman and the Management of M/s. Aman Scales Pvt. Ltd., 14-A, N.I.T., Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Kishan Giri was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the demand notice dated 3rd September, 1983, as well as the claim statement dated 20th September, 1984, it was alleged by the claimant that he was employed as Turner in the respondent factory on 1st August, 1981, but was now allowed to join duty on 12th August, 1983, and, as such, termination of his service was illegal. It was, therefore, prayed that he be reinstated with full back wages.

The Management in written statement dated 3rd October 1984, pleaded that the service of the claimant had not been terminated and that claimant did not resume duty in spite of several letters written to him and that no dispute existed between the parties on the date of making the reference and, as such, the reference was bad and illegal. It was further pleaded that the claimant absented himself from duty without previous sanction of leave and that he was in

(1) Whether the reference is bad as pleaded? OPM

(2) Whether the claimant did not resume duty in spite of several letters written to him as pleaded? OPM

(3) Whether the respondent-management is a Shop as pleaded? OPM

(4) Whether the termination of service of Shri Kishan Giri was justified and in order? If not, to what relief is he entitled? OPM

4. It may be mentioned that on the last date of hearing none appeared on behalf of the workman and, as such, *ex parte* proceedings were ordered against him. The Management has examined one witness and documents, Ex. M-1 to M-4, have been tendered in evidence. I have heard the representative of the Management.

#### ISSUE No. 1:

5. The Management examined Shri Jagjit Kumar, Office Manager, as MW-1 who stated that the claimant joined service in July, 1982, and started absenting himself after 12th August, 1983, and was being marked absent even now. He further stated that the document Ex. M-1 was sent to the claimant to join duty,—*vide* postal receipt Ex. M-2 and that another letter was sent to him copy Ex. M-3, which was received back as undelivered,—*vide* cover Ex. M-4. In cross examination, he stated that the Management was willing to take him back on duty, but without back wages.

6. A perusal of the above evidence would show that the claimant absented himself with effect from 12th August, 1983, and did not join duty in spite of the letters Ex. M-1 and M-3 having been written to him and further that the name of the claimant has not been struck off so far and he was being marked absent. Consequently, when the demand notice dated 3rd September, 1983, was given by the claimant, his services were not terminated and it is the case of



the Management that his services were not terminated so far and as such the present reference is premature because there is no evidence on the file to hold that the services of the claimant have been terminated. Consequently, it is not necessary to decide the remaining issues. The award is passed accordingly.

Dated the 11th November, 1985.

R. N. BATRA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 884, dated the 11th November, 1985.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

The 26th December, 1985

No. 9/5/84-6 Lah./11044.- In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the management of The Haryana Roadways, Kaithal:-

IN THE COURT OF SHRI V. P. CHAUDHARY,  
PRESIDING OFFICER, LABOUR COURT,  
AMBALA.

Reference No. 171 of 1984.

(Old No. 83 of 1983)

SHRI MIYA SINGH, WORKMAN AND THE  
MANAGEMENT OF MESSRS HARYANA  
ROADWAYS, KATHAL.

Present:

Shri Karan Singh, for workman.  
Shri A. R. Goyal, for the respondent.

#### AWARD

The Hon'ble Governor of Haryana, vide its powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred dispute between Shri Miya Singh, workman and Messrs Haryana Roadways,

Kaithal, to Labour Court Faridabad. The terms of reference are as under :-

"Whether the termination of services of Shri Miya Singh was justified and in order? If not, to what relief is he entitled to?"

On creation of Court at Ambala this reference was received by transfer.

Shri Miya Singh workman in his statement of claim alleged that he joined service of respondent on 8th August, 1976 and used to get Rs. 325 P.M. His services were illegally terminated on 10th June, 1982, in contravention of section 25 (F) of Industrial Disputes Act, 1947. He has prayed for re-instatement with continuity in service and with full back wages.

Messrs Haryana Roadways, Kaithal contested this dispute and contended that applicant Shri Miya Singh is not covered under the definition of workman under the Industrial Disputes Act, 1947. It was also contended that Shri Miya Singh was appointed as a Chowkidar on daily wages and there was a specific clause in his appointment that his services can be terminated at any time without any notice or reasons. It was further contended that the applicant was appointed for a specific period. According to the terms and conditions of his appointment. His services were terminated. Section 25 (F) of the Industrial Disputes Act, 1947, is not attracted in the case in hand.

Shri Miya Singh, Chowkidar filed replication and controverted the contentions of the Messrs Haryana Roadways take up in the written statement.

On the pleadings of the parties the following issues were framed:

ISSUE No. 1:

Whether termination order dated 10th June, 1982, is justified? If not its effect.

ISSUE NO. 2:

RELIEF.

I have heard Authorised representative of Shri Miya Singh and Shri A. R. Goyal, Law officer of Messrs Haryana Roadways, have perused the evidence available on the file my issue-wise findings are as under:

ISSUE NO. 1 :

Messrs Haryana Roadways in support of its case examined Shri Om Parkash, clerk Haryana

Roadways, Kaithal, who stated that he has brought concerned records pertaining to Shri Miya Singh, which is silent about the appointment letter of Shri Miya Singh. In cross-examination, he also expressed his inability to identify works slips mark A to mark C. However he admitted that order Ex. A-1 was issued by the office of General Manager, Kaithal. He also stated that he did not know whether any notice or retrenchment compensation were ever given to the workman or not. Shri Kaser Dass Madan appeared as MW-II. He stated since 11.77 up to 9th June, 1982, workman remained in the employment of respondent. Compensation at the time of termination of his services was not paid to him.

Shri Miya Singh, workman appeared in the witness box and stated on oath that he joined service of respondent on 8th November, 1976 as a Chowkidar at pay of Rs. 325/-. His services were terminated illegally on 10th June, 1982. At the time of termination of his services he was neither issued any notice nor any retrenchment compensation was paid to him.

In view of the above evidence it is admitted fact that workman Shri Miya Singh remained in the service of Messrs General Manager, Kaithal more than 240 days. As admitted by MW-2 Shri Kesar Dass, clerk, office of General Manager, Haryana Roadways, Kaithal, that at the time of termination of services of workman he was neither given any notice nor retrenchment compensation was paid to him. This evidence discloses that there is a clear violation of section 25(F). If the management wanted to terminate services of the workman in these circumstances according to section 25 (F) it was bound to issue notice in default of that pay of notice period must have been paid along with retrenchment compensation as well as appropriate authority (Government to Haryana) must have been forward. But these mandatory provisions of Industrial Disputes Act, 1947 were not observed. Hence it is held that the termination order of service of Shri Miya Singh, workman dated 10th June, 1982 is illegal and not binding on Shri Miya Singh, hence, it is set aside. So this issue is decided, in favour of workman against the management.

#### ISSUE No. 2:

Regarding the dispute in hand, I pass my award accordingly.

Dated the 25th November, 1985.

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

Endorsement No. 2924, dated the 29th November, 1985.

Forwarded (Four Copies), to the Financial Commissioner, and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

No. 9/5/84-Lab./11045.--In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the management of M/s Manhor Singh and Sons, Industrial Area, G. T. Road, Ambala Cantt:—

IN THE COURT OF SHRI V. P. CHAUDHARY,  
PRESIDING OFFICER, LABOUR COURT,  
AMBALA.

Reference No. 115 of 1984

(Old No. 32 of 1983)

SHRI PAUL SINGH, WORKMAN AND THE  
MANAGEMENT OF THE MESSRS MANHOR  
SINGH AND SONS, INDUSTRIAL AREA,  
G.T. ROAD, AMBALA CITY.

Present:

Shri J. R. Sharma, for the workman.  
Shri R. L. Chopra, for the respondent.

#### AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred, vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Paul Singh workman and the management of the Messrs Manhor Singh and Sons to Labour Court, Faridabad. The terms of reference are as under:—

"Whether the termination of services of Shri Paul Singh was justified and in order? If not, what relief is he entitled to?"

In April, 1984 Labour Court, was contested at Ambala so this reference was received by transfer.

Shri Paul Singh, workman through his demand notice dated 15th July, 1982, alleged that he joined the employment of respondent as a Mistri and worked from April, 1979 to March, 1981. His services were illegally terminated on 1st April, 1981 in violation of section 25 (F) of Industrial Disputes Act, 1947. Shri Paul Singh has prayed for re-instatement with continuity in service and with full back wages.

Shri Manhor Singh, respondent contended that his case is not covered under the Industrial Disputes Act, because his firm is registered under the Shops and Establishment Act. He further contended that Shri Paul Singh joined his service on 2nd April, 1979, and left in November, 1979. He again joined his job in April, 1980 and then left on 2nd May 1981. He pleaded that since Shri Paul Singh left his job voluntarily so its amount to abandonment of the job and not termination.

On the pleadings of the parties the following issues were framed :-

#### ISSUES:

- (1) Whether the termination as alleged is according to law as per reference if not its effect? OPM
- (2) Whether the demand notice is not covered under the Shops and Commercial Establishment Act.
- (3) Whether the notice is barred on account of Labour? ORM
- (4) Relief.

I have heard learned authorised representative of the parties and have gone through the evidence present on the file. My issuewise findings are as under :-

#### ISSUE NO. 1:

In support of this issue management examined Shri Madan Lal is MW-1. He stated that workman left job of the respondent-management of his own. His services were never terminated. He also stated that Shri Paul Singh used to work on contract basis and was not an employee of the management.

On the other hand it was rebutted by Shri Paul Singh. He also stated that he filed demand notices against Vijay Steel Industries and Ajay Steel Industries, etc. These notices were taken back by him.

Statement of Shri Madan Lal that the management is registered under the Shops and Establishment Act, goes un-rebutted which shows

that the dispute is not covered under the Industrial Disputes Act, 1947. It is specifically observed in 1981 LAB IONOC 47 that where the establishment is registered under the Shops and Establishment Act Industrial Disputes Act is not attracted nor workman is entitled to any re-trenchment compensation by invoking section 25 (F).

In view of above evidence and the case law referred hereto it is clearly established that in this case in hand, service of workman was never terminated because he was never in employment of the management. In fact he used to work on contract basis. So the workman has been to establish that his termination was illegal on the other hand management has been able to prove its case that Shri Paul Singh abandoned his job. However, it is a specific case of the management that Shri Paul Singh use to work on contract basis and so was not an employee of the management. So this issue is decided in favour of management, against the workman.

#### ISSUE NO. 2:

Demand notice is not liable to be issued because the dispute in hand is not covered under the Industrial Disputes Act, 1947. The respondent establishment is registered under the Shops and Establishment Act, so the workman had not right to issue demand notice under section 2-A of the Industrial Disputes Act, 1947. So this issue is again decided against the workman in favour of management.

#### ISSUE NO. 3:

In view of my findings issues No. 2, issue No. 3 has become redundant.

#### ISSUE NO. 4:

In view of my findings on above issues the workman has failed to prove its case so he has not at all entitled to re-instatement with continuity in service and back wages.

I pass my award regarding the disputes in hand accordingly.

Dated the 25th November, 1985.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

Endorsement No. 2025, dated 29th November, 1985.

Forwarded (Four Copies) to the Financial Commissioner, and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.